UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, : CASE NO. 1:13-CR-00031-JG-7

Plaintiff,

:

vs. : OPINION & ORDER

: [Resolving Docs. No. <u>110</u>, <u>111</u>, <u>112</u>.]

GORDON EGAN,

:

Defendant.

:

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On January 16, 2013, the Government indicted Defendant Gordon Egan on one count of conspiracy to possess with intent to distribute cocaine, heroin, and marijuana, 21 U.S.C. §§ 841(a)(1), (b)(1)(A), (b)(1)(B), (b)(1)(D), and 846. It also indicted him on four counts of use of a telephone to facilitate drug trafficking, 21 U.S.C. § 843(b).

Now, Egan has made three motions. First, he asks the Court to require the Government to give him notice of its intention to use evidence at trial.^{2/} Second, he asks the Court to require the Government to notify him of its intent to offer evidence under Federal Rule of Evidence 404(b).^{3/} Third, he asks the Court to require the Government to produce certain evidence under *Brady v*. *Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).^{4/} The Government has responded.^{5/} For the reasons below, Egan's motions are **DENIED**.

 $[\]frac{1}{2}$ Doc. 1 at 2.

 $[\]frac{2}{2}$ Doc. 110.

 $[\]frac{3}{2}$ Doc. 111.

 $[\]frac{4}{10}$ Doc. 112.

 $[\]frac{5}{2}$ Doc. 113.

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I.

A. Motion for Intent to Use Evidence at Trial

On March 26, 2013, Egan moved the Court to require the Government to "give notice of its

intention to use evidence (in chief at trial)." To the extent Egan aks the Court to require the

Government to give notice of its intent to use evidence under *Bruton v. United States*, 391 U.S. 123

(1968) or Federal Rule of Criminal Procedure 12(b)(4)(B), the Court finds that the Government has

complied with Egan's request. Here, the Court has provided Egan with extensive discovery under

Federal Rule of Criminal Procedure 16. Moreover, the Government says that, at this time, "it does

not intend to introduce at trial any statements of non-testifying co-defendants which incriminate

Egan." It says that it will give Egan pre-trial notice if it decides to use *Bruton* evidence. Thus,

the Court denies Egan's motion without prejudice. Egan may raise this issue again if he can show

that the Government has not complied with Rule 12(b)(4)(B) or intends to offer *Bruton* evidence.

B. Motion for Rule 404(b) Evidence

On March 26, 2013, Egan also moved the Court to require the Government to notify him of

its intent to offer evidence under Federal Rule of Evidence 404(b). The Court finds that Egan is

not entitled to 404(b) evidence because the Government has indicated it will not offer such

evidence. Under Rule 404(b), the Government must, before trial, "provide reasonable notice of

the general nature" of any evidence of crimes, wrongs, or other acts "that the prosecutor intends to

 $\frac{6}{2}$ Doc. 110 at 1.

 $\frac{7}{2}$ Doc. 113 at 1.

 $\frac{8}{Id}$. at 2.

 $\frac{9}{2}$ Doc. 111 at 1.

 $\frac{10}{\text{Doc.}}$ Doc. 113 at 2.

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offer at trial." The comments to the Rule say that "[o]ther than requiring pretrial notice, no specific

time limits are stated in recognition that what constitutes a reasonable request or disclosure will

depend largely on the circumstances of each case." The Sixth Circuit has said that "a defendant

is not entitled to discover all the overt acts that might be proven at trial." $\frac{13}{2}$

Here, Egan has failed to show that the Government intends to offer 404(b) evidence. To the

contrary, the Government says that, at this time, "it does not intend to introduce evidence against

Egan pursuant to 404(b)." Moreover, the Government says that it will give Egan pre-trial notice

if it decides to use 404(b) evidence. Thus, the Court denies Egan's motion without prejudice.

Egan may raise this issue again if he can show that the Government has failed to meet its Rule

404(b) obligations.

C. Motion for Giglio and Brady Evidence

On March 26, 2013, Egan moved the Court to order the Government to divulge any

considerations or promises it has given or intends to give to its witnesses or their families. 16/1 He also

requests the Court order the Government to divulge any false statements made by its witnesses or

any information that bears on the credibility of its witnesses. 17/1 He requests the same information

about any confidential informants or Government sources. 18/ To support his position, he cites to

Giglio v. United States, 405 U.S. 150 (1972) and its progeny.

11/Fed. R. Evid. 404(b).

13/United States v. Salisbury, 983 F.2d 1369, 1375 (6th Cir. 1993).

 $\frac{14}{\text{Doc.}}$ 113 at 2.

 $\frac{15}{Id}$.

 $\frac{16}{}$ Doc. 112 at 1.

 $\frac{17}{Id}$.

 $\frac{18}{Id}$. at 3.

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The Court finds that Egan is not entitled to Giglio information at this time because the

Government is required only to makes its Giglio disclosures in time for effective use at trial. The

Sixth Circuit has said that *Giglio* does not give "the defense a general right to pre-trial discovery." ^{19/}

Instead, "due process requires only that disclosure of exculpatory material be made in sufficient time

to permit the defendant to make effective use of that material at trial."20/ Here, Egan has failed to

offer any specific reason why he needs such information immediately. Moreover, the Government

has indicated that it intends to comply with its obligations under *Brady* and *Giglio*. Thus, the

Court denies Egan's motion without prejudice. Egan may raise this issue again if he can show that

the Government has failed to meet its obligations under Giglio and Brady.

II.

For the reasons above, the Court **DENIES** Egan's motions.

IT IS SO ORDERED.

Dated: April 23, 2013 James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

^{19/} United States v. Presser, 844 F.2d 1275, 1283 (6th Cir. 1988).

 $[\]frac{20}{Id}$.

 $[\]frac{21}{\text{Doc.}}$ 113 at 2-3.